Supreme Court, U. S.
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No. 80-443

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

HEWETT M. REEVES, *Petitioner,*

v.

INTERNATIONAL TELEPHONE & TELEGRAPH CORPORATION, *Respondent.*

RAY MARSHALL, Secretary of Labor, United States Department of Labor, *Intervenor.*

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

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PETITIONER'S ANSWER TO RESPONDENT'S OPPOSITION

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APPLICANT'S REPLY TO RESPONDENT'S OPPOSITION

May It Please The Court:

Respondent's opposition, which does not comply with Rule 28.1, seeks to distort the situation. It is ITT that is trying to argue with the facts as found by the Fifth Circuit. This is particularly obvious in connection with the treatment of fringe benefits under 29 U.S.C. 203(m) which involves applicant's first question presented for review.

(1) Personal expenses v. expenses on employer's behalf.

ITT argues the $980.00 per month ($3.77 per hour) constitutes expenses incurred on the employer's behalf[1] where the Court of Appeal clearly stated these expenses were for "travel, lodging, eating and OTHER PERSONAL EXPENSES. . . ." (emphasis ours), application, appendix pg. 2a. The language is clear — the court declared these to be personal stating simply that they were not includable because "reimbursed" rather than "furnished", thus creating the loophole. Application, appendix page 23a.

(2) Secretary of Labor as a non-applicant.

Respondent would like to benefit from its argument that the Secretary did not seek certiorari. This ignores the whole thrust of the opinion that plaintiff can now present these matters for himself without having to go through the Secretary. Application, appendix p. 14a et seq.

(3) Review of law sought, not facts.

We do not seek reviews of facts, we seek the proper application of the law to the facts as found.

A. 29 U.S.C. 203(m).

This section of the law explicitely includes "board, lodging, or other facilities."

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[1] Complete expense reports in the record reveal that the $980.00 per month constituted only about one-half of the total reimbursements to plaintiff. Mr. Reeves had extracted the personal expenses and testified only as to these. This portion of the record has already been forwarded to this Court.

B. Employee should be made whole.

Mitchell v. *DeMario Jewelry, Inc.*, 361 U.S. 288, expresses this Court's view that an employee should be made whole and not faced with a "Hobson's choice."

C. Attorney fees.

Whether plaintiff's attorney received an adequate fee is patently not an issue. Whether the fee allowed by the Court was so small as to discourage able counsel from undertaking representation in this type of case is an issue as the public rights would not be vindicated thereby. The test of *Newman* v. *Piggy Park Enterprises, Inc.* 390 U.S. 400 has not been met when $35,000.00 is awarded for over 2,000 hours of representation extending over more than 12 years. In such a case, the "discretion" was not "sound."

D. Calculation of liquidated damages.

The resolution of the important question of method of calculation of liquidated damages on lost wages should certainly not be deferred until "an appellate court should rule in accordance with petitioner's advocated interpretation." The exercise of this Court's jurisdiction is called for when the lower Courts rule incorrectly, as in the case at bar. This is definitely an important question of Federal Law which has not been but should be ruled on by this Court.

CONCLUSION

We respectfully submit the application should be granted for the reasons cited in the application and in this reply.

Respectfully submitted,

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CERTIFICATE

I do hereby certify that a copy of the above and foregoing has been mailed to opposing counsel, Cook, King, Yancey and Galloway, 600 Commercial National Bank Building, Shreveport, Louisiana 71101 on this th day of December, 1980.

LEROY H. SCOTT, JR.